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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Holly Skelton,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-00703-PHX-DWL

ORDER

15 Plaintiff challenges the denial of her application for benefits under the Social
16 Security Act (“the Act”) by the Commissioner of the Social Security Administration
17 (“Commissioner”). The Court has reviewed Plaintiff’s opening brief (Doc. 19), the
18 Commissioner’s answering brief (Doc. 20), and Plaintiff’s reply (Doc. 21), as well as the
19 Administrative Record (Doc. 14, “AR”), and now reverses the Administrative Law Judge’s
20 (“ALJ”) decision and remands for further proceedings.

21 **I. Procedural History**

22 On February 20, 2019, Plaintiff filed an application for disability and disability
23 insurance benefits, alleging disability beginning on October 15, 2017. (AR at 162.) The
24 Social Security Administration (“SSA”) denied Plaintiff’s application at the initial and
25 reconsideration levels of administrative review and Plaintiff requested a hearing before an
26 ALJ. (*Id.*) On February 12, 2021, following a telephonic hearing, the ALJ issued an
27 unfavorable decision. (*Id.* at 162-176.) The Appeals Council later granted Plaintiff’s
28 request for review but affirmed the decision of the ALJ after considering additional records

1 that went unconsidered by the ALJ. (*Id.* at 29-31.)

2 II. The Sequential Evaluation Process And Judicial Review

3 To determine whether a claimant is disabled for purposes of the Act, the ALJ
4 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
5 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
6 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
7 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
8 § 404.1520(a)(4)(i). At step two, the ALJ determines whether the claimant has a “severe”
9 medically determinable physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). At
10 step three, the ALJ considers whether the claimant’s impairment or combination of
11 impairments meets or medically equals an impairment listed in Appendix 1 to Subpart P
12 of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so, the claimant is automatically
13 found to be disabled. *Id.* At step four, the ALJ assesses the claimant’s residual functional
14 capacity (“RFC”) and determines whether the claimant is capable of performing past
15 relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If not, the ALJ proceeds to the fifth and
16 final step, where she determines whether the claimant can perform any other work in the
17 national economy based on the claimant’s RFC, age, education, and work experience. 20
18 C.F.R. § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

19 An ALJ’s factual findings “shall be conclusive if supported by substantial
20 evidence.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may set aside
21 the Commissioner’s disability determination only if it is not supported by substantial
22 evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).
23 Substantial evidence is relevant evidence that a reasonable person might accept as adequate
24 to support a conclusion considering the record as a whole. *Id.* Generally, “[w]here the
25 evidence is susceptible to more than one rational interpretation, one of which supports the
26 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 947,
27 954 (9th Cir. 2002) (citations omitted). In determining whether to reverse an ALJ’s
28 decision, the district court reviews only those issues raised by the party challenging the

1 decision. *Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

2 III. The ALJ's Decision

3 The ALJ found that Plaintiff had not engaged in substantial, gainful work activity
4 since the alleged onset date and that Plaintiff had the following severe impairments:
5 “cervical and lumbar spondylosis, degenerative disc disease and degenerative joint disease
6 of the lumbar spine, and migraines.” (AR at 165.)¹ Next, the ALJ concluded that Plaintiff's
7 impairments did not meet or medically equal a listing. (*Id.* at 167-68.) Next, the ALJ
8 calculated Plaintiff's RFC as follows:

9 [T]he claimant had the residual functional capacity to perform light work as
10 defined in 20 CFR 404.1567(b) except the claimant can frequently balance,
11 stoop, kneel, crouch, climb ramps/stairs and occasionally crawl and climb
12 ladders, ropes, and scaffolds. The claimant can overhead reach. In addition,
13 she must avoid concentrated exposure to extreme cold, fumes, odors, dusts,
gases, and poor ventilation. The claimant cannot be exposed to dangerous
machinery and unprotected heights.

14 (*Id.* at 168.)

15 As part of this RFC determination, the ALJ evaluated Plaintiff's symptom
16 testimony, concluding that Plaintiff's “medically determinable impairments could
17 reasonably be expected to cause the alleged symptoms; however, the claimant's statements
18 concerning the intensity, persistence and limiting effects of these symptoms are not entirely
19 consistent with the medical evidence and other evidence in the record for the reasons
20 explained in this decision.” (*Id.* at 169. *See also id.* at 165-67 [evaluating Plaintiff's
21 testimony regarding mental symptoms during step-two analysis].) The ALJ also evaluated
22 opinion evidence from various medical sources, concluding as follows: (1) Dr. Kari
23 Coelho, Psy.D., state agency psychological consultant (“persuasive”); (2) Dr. Sunitha
24 Bandlamuri, M.D., treating physician (“unpersuasive”); and (3) “the State agency

25 ¹ The ALJ also noted that Plaintiff presented evidence of “peripheral neuropathy,
26 hialal hernia, and urinary incontinence” but determined that those impairments “do not
27 cause more than a minimal effect on her ability to perform the basic work activities” and
28 were thus “nonsevere.” (AR at 165.) Similarly, the ALJ evaluated Plaintiff's “medically
determinable mental impairments of an anxiety disorder and depressive disorder” but
concluded that they “did not cause more than minimal limitation in the claimant's ability
to perform basic mental work activities and were therefore nonsevere.” (*Id.* at 165-67.)

psychological reviewers” (“persuasive”). (*Id.* at 171-74.)² Additionally, the ALJ evaluated a third-party statement from Plaintiff’s mother (“unpersuasive”). (*Id.* at 173.)

Based on the testimony of a vocational expert, the ALJ concluded that Plaintiff could perform her past relevant work as an office manager and medical secretary. (*Id.* at 175.) Thus, the ALJ concluded that Plaintiff is not disabled. (*Id.* at 175-76.)

IV. Discussion

Plaintiff presents four issues on appeal: (1) whether the ALJ properly evaluated “Plaintiff’s mental impairments and limitations”; (2) whether the ALJ properly evaluated “the medical opinions and prior administrative medical findings”; (3) whether the ALJ’s RFC determination was “supported by the substantial evidence”; and (4) whether the ALJ adjudicated “the entire period-at-issue.” (Doc. 19 at 1-2.) As a remedy, Plaintiff requests “that this case be remanded to the Commissioner for further proceedings.” (*Id.* at 25.)

A. **Mental Impairments And Limitations**

Plaintiff’s first assignment of error lumps together two distinct, if related, challenges—Plaintiff faults the ALJ for failing to categorize her mental impairments as “severe” during step two of the sequential analysis and then faults the ALJ for failing to consider those impairments when formulating the RFC. For purposes of analytical clarity, the Court will analyze those challenges separately.

To proceed beyond step two, a claimant must have a severe impairment, or a combination of severe impairments, that “significantly limits [her] physical or mental ability to do basic work activities.” 20 C.F.R. § 404.1520(c). “An impairment is not severe if it is merely ‘a slight abnormality (or combination of slight abnormalities) that has no more than a minimal effect on the ability to do basic work activities.’” *Webb v. Barnhart*, 433 F.3d 683, 686 (9th Cir. 2005) (citations omitted). Notably, “[s]tep two is merely a threshold determination meant to screen out weak claims.” *Buck v. Berryhill*, 869 F.3d

² The ALJ’s opinion does not refer to “[t]he State agency psychological consultative reviewers” by name. (AR at 172.) As the ALJ noted, their corresponding opinions appear at “Exhibit 1A” (AR at 73-92), “Exhibit 4A” (AR at 113-132), and “Exhibit 6A” (AR at 134-58).

1 1040, 1048 (9th Cir. 2017) (citation omitted). Because the ALJ must evaluate the
2 functional impact of both severe and non-severe impairments when determining the RFC
3 during later steps, “[t]he RFC . . . should be exactly the same regardless of whether certain
4 impairments are considered ‘severe’ or not.” *Id.* at 1049 (emphasis omitted).

5 Given these principles, to the extent Plaintiff’s argument is that the ALJ erred by
6 failing to categorize her anxiety and depression as severe for step-two purposes (Doc. 19
7 at 10-12), reversal is not warranted. “As this Court has observed in earlier cases, Ninth
8 Circuit law is not a model of clarity concerning how to evaluate claims of step-two error.
9 Some cases suggest that, although it is error for an ALJ to fail to characterize a particular
10 impairment as ‘severe’ during step two, the error can be disregarded as harmless if the ALJ
11 properly addresses the impairment during later steps. Other decisions suggest that a
12 claimant can’t complain about an ALJ’s failure to identify a particular impairment as
13 ‘severe’ during step two so long as the ALJ determined the claimant also had other
14 impairments that so qualify. At any rate, the dispositive issue is whether the ALJ properly
15 evaluated the evidence and testimony concerning that condition during later steps and
16 factored that condition into the RFC.” *Harvey v. Comm’r of Soc. Sec. Admin.*, 2021 WL
17 5822641, *2 (D. Ariz. 2021) (cleaned up). Accordingly, the dispositive issue here is
18 whether Plaintiff has established the existence of harmful error with respect to the ALJ’s
19 RFC formulation during later steps. The dispute over the step-two severity characterization
20 is a red herring.

21 As for the merits of the RFC determination, “[t]he ALJ assesses a claimant’s RFC
22 based on all the relevant evidence in the case record. The ALJ must consider both the
23 medical evidence and descriptions and observations of the claimant’s limitations from the
24 claimant’s impairment(s), including limitations that result from the claimant’s symptoms,
25 such as pain, provided by the claimant, family, friends, and other people. The RFC
26 assessment must contain a thorough discussion and analysis of the objective medical and
27 other evidence, including the individual’s complaints of pain and other symptoms and the
28 adjudicator’s personal observations, if appropriate. In other words, the ALJ must take the

1 claimant’s subjective experiences of pain into account when determining the RFC.”
2 *Laborin v. Berryhill*, 867 F.3d 1151, 1153 (9th Cir. 2017) (cleaned up). *See also Vertigan*
3 *v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“[I]t is the responsibility of the ALJ, not
4 the claimant’s physician, to determine residual functional capacity.”). “Under the
5 substantial-evidence standard, a court looks to an existing administrative record and asks
6 whether it contains ‘sufficient evidence’ to support the agency’s factual determinations.”
7 *Biestek*, 139 S. Ct. at 1154.

8 At least as it relates to the ALJ’s consideration of limitations arising from mental
9 impairments, the Court finds no harmful error in the ALJ’s RFC formulation. As an initial
10 matter, the ALJ followed the exact process that the relevant authorities and regulations
11 require ALJs to follow when making an RFC determination—the ALJ expressly considered
12 all of the medical opinions in the record related to Plaintiff’s mental impairments, as well
13 as Plaintiff’s testimony regarding the symptoms arising from her mental impairments and
14 the testimony of third-party witnesses regarding those symptoms, and provided reasons for
15 crediting or not crediting each of those evidentiary sources. (AR at 168-74. *See also id.* at
16 165-67 [evaluating mental impairments for step-two purposes].)

17 As for the substance of the RFC, although Plaintiff accuses the ALJ of failing to
18 “consider these nonsevere [mental] impairments when formulating Plaintiff’s [RFC]”
19 (Doc. 19 at 14), the ALJ expressly considered those conditions in the portion of the decision
20 setting forth the RFC determination. There, the ALJ addressed (1) Plaintiff’s testimony
21 concerning the symptoms related to her mental impairments (AR at 168-69); (2) the
22 observations and opinions of medical sources on the same topic (*id.* at 169-72); (3) the
23 observations of a third-party on the same topic (*id.* at 173); (4) the consultative evaluation
24 of Dr. Coelho (*id.* at 171-72); and (5) Plaintiff’s activities of daily living (“ADLs”) (*id.* at
25 173-74). As part of that discussion, the ALJ addressed Plaintiff’s mental impairments,
26 including her self-reported symptoms of struggling to “remember, complete tasks,
27 concentrate, understand, follow instructions, get[] along with others” as well as
28 “flashbacks[,] nightmares, anxiety and depression.” (*Id.* at 168-69.) The ALJ then

1 identified several reasons for discrediting those claims. For example, the ALJ noted that
2 during her physical examinations, Plaintiff “was awake, alert, oriented, and followed
3 commands.” (*Id.* at 169, citing AR at 489.) The ALJ also specifically discussed the results
4 of the evaluation performed by Dr. Coelho. (*Id.* at 171-72.) During that evaluation,
5 Plaintiff admitted “she was not participating in any type of mental health treatment,” stated
6 that she “had never been hospitalized for psychiatric reasons as an adult,” and “denied
7 being depressed or anxious at this time or being suicidal, helpless, hopeless, worthless, or
8 crying.” (*Id.* at 172, citing AR at 694-98.) The ALJ further noted that despite Dr. Coelho’s
9 diagnosis of an “anxiety disorder” and observation that Plaintiff was “crying and
10 [displayed] some emotional dysregulation during the exam that [Plaintiff] attributed to” a
11 medication change, Plaintiff “scored a 29 out of 30 on the Mini Mental Status examination”
12 and “dressed herself on a daily basis without assistance, took baths, vacuumed, put dishes
13 away, prepared simple meals, did laundry with help, and enjoyed gardening and taking care
14 of her animals.” (*Id.* at 172.) Finally, the ALJ noted that Plaintiff was not pursuing any
15 “ongoing formal mental health treatment” and instead “reported that Kratom tea and black
16 seed oil had been helping with anxiety and she did not need Xanax anymore.” (*Id.* at 172,
17 citing AR at 776.) Given this backdrop, the ALJ’s determination of Plaintiff’s RFC, as
18 least as it relates to Plaintiff’s mental impairments, was supported by substantial evidence.
19 *See, e.g., Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (“[E]vidence of
20 medical treatment successfully relieving symptoms can undermine a claim of disability.”);
21 *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (“An ALJ may consider a range of
22 factors in assessing credibility, including . . . ‘unexplained or inadequately explained
23 failure to seek treatment or to follow a prescribed course of treatment.’”) (quotation
24 omitted); *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 693 (9th Cir. 2009) (ALJ
25 properly relied on evidence that the claimant’s allegations regarding the severity of his
26 limitations were exaggerated); *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)
27 (although subjective testimony “cannot be rejected on the sole ground that it is not fully
28 corroborated by objective medical evidence, the medical evidence is still a relevant factor”

1 in determining the severity of the claimant’s limitations); *Reddick v. Chater*, 157 F.3d 715,
 2 722 (9th Cir. 1998) (ADLs can be probative of a claimant’s credibility); *Morris v. Berryhill*,
 3 358 F. Supp. 3d 875, 884 (D. Ariz. 2019) (“This was a clear and convincing reason for
 4 finding plaintiff’s symptom statements less than credible because in numerous treatment
 5 notes, plaintiff reported that she was doing well, found her medications beneficial, and had
 6 no side effects from her medication.”).

7 Nor is there any merit to Plaintiff’s contention that the ALJ failed to consider, and
 8 incorporate into the RFC, the mental limitations described by Dr. Coelho. (Doc. 19 at 13
 9 “[T]he unrefuted opinion from Dr. Coelho indicated Plaintiff had functional limitations
 10 stemming from her mental impairments. In particular, Dr. Coelho opined Plaintiff was
 11 limited to ‘carrying out simple instructions’ and that her lack of sleep and pain ‘could affect
 12 her ability to maintain attention and concentration for a sustained period of time.’”.) As
 13 background, Dr. Coelho expressed her opinions in a form entitled
 14 “Psychological/Psychiatric Medical Source Statement.” (AR at 699-700.) At the outset of
 15 the form, Dr. Coelho indicated that Plaintiff had “a current psychological diagnosis” and
 16 that Plaintiff had “limitations associated with this condition . . . [that are] expected to last
 17 12 continuous months from the date of this exam.” (AR at 699.) As for three of the four
 18 potential categories of mental impairments (“understanding and memory,” “social
 19 interaction,” and “adapting to change”), Dr. Coelho did not identify “any significant
 20 problems.” (*Id.*) As for the fourth category (“sustained concentration and persistence”),
 21 Dr. Coelho wrote the following:

22 [Plaintiff] did appear capable of carrying out simple instructions. She
 23 demonstrated sufficient levels of attention and concentration during the
 24 evaluation. The claimant is reporting sleep disturbance. She awakens
 25 approximately twice nightly, has nightmares, and increased perspiration.
 26 She can return to sleep right away. She may nap 30-60 minutes at a time
 27 during the day or up to 3 hours depending on her energy and fatigue. She
 28 has chronic migraine headaches. At times, she has to lay down in a dark
 room due to her migraines and she often vomits. Depending on the amount
 of sleep and the amount of pain that she is experiencing at a single time, it
 could affect her ability to maintain attention and concentration for a sustained
 period of time. She does get out of bed on a daily basis. She is reporting low
 levels of energy on a consistent basis. She does appear capable of providing
 reliable transportation for herself[.]

1 (*Id.*)

2 Plaintiff's challenge to the ALJ's evaluation of Dr. Coelho's opinions, and the
 3 Commissioner's defense of the ALJ's evaluation, both ultimately turn on whether the ALJ
 4 properly interpreted this passage from Dr. Coelho's report.³ The Court is mindful that "we
 5 leave it to the ALJ to determine credibility, resolve conflicts in the testimony, and resolve
 6 ambiguities in the record." *Brown-Hunter v. Colvin*, 806 F.3d 487, 492 (9th Cir. 2015)
 7 (quoting *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014)).
 8 With this principle in mind, the Court finds no error. The ALJ interpreted Dr. Coelho's
 9 opinion as not imposing any limitations on Plaintiff's ability to concentrate or persist. (AR
 10 at 172 ["Although Dr. Coelho diagnosed the claimant with an anxiety disorder, she noted
 11 no limitations due to mental impairment/symptoms."].) The Court cannot say this
 12 conclusion was in error. Much of the parties' dispute centers on the following sentence in
 13 Dr. Coelho's report: "[Plaintiff] did appear capable of carrying out simple instructions."
 14 (AR at 699.) In Plaintiff's view, this sentence should be viewed as an expression of a
 15 limitation—*i.e.*, that Plaintiff can only follow simple instructions and would be unable to
 16 follow more complex instructions. Although this interpretation is plausible, it was rational
 17 for the ALJ to interpret it as a mere observation that Plaintiff was, in fact, capable of
 18 following the simple instructions Dr. Coelho provided during the examination. Indeed, in
 19 the very next sentence in the report, Dr. Coelho wrote that Plaintiff "demonstrated
 20 sufficient levels of attention and concentration during the evaluation." (*Id.*) Because both
 21 sides have offered rational (if competing) interpretations of Dr. Coelho's ambiguous
 22 statement, this Court must affirm. *Ghanim*, 763 F.3d at 1163 ("When evidence reasonably
 23 supports either confirming or reversing the ALJ's decision, we may not substitute our
 24 judgment for that of the ALJ.") (citing *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d

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 26 ³ Plaintiff does not argue that the ALJ failed to consider the supportability and
 27 consistency factors when evaluating Dr. Coelho's opinion, which is the typical method of
 28 challenging an ALJ's consideration of a medical source's opinion in a Social Security
 appeal. To the contrary, Plaintiff argues that the ALJ properly characterized Dr. Coelho's
 opinions as persuasive but failed to incorporate Dr. Coelho's opined-to limitations in the
 RFC.

1 1190, 1196 (9th Cir. 2004)).

2 The same analysis applies to the other ambiguous statement in Dr. Coelho's report,
3 which was that "[d]epending on the amount of sleep and the amount of pain that [Plaintiff]
4 is experiencing at a single time, it could affect her ability to maintain attention and
5 concentration for a sustained period of time." (AR at 699.) Although Plaintiff plausibly
6 interprets this statement as an expression of limitation (Doc. 19 at 17), it was rational for
7 the ALJ to conclude otherwise, given that Dr. Coelho merely noted that the symptoms
8 "could" undermine Plaintiff's attention and concentration. "Although alternative views of
9 this evidence are plausible, the ALJ's interpretation is a rational one and is therefore
10 entitled to deference." *Baca v. Comm'r of Soc. Sec. Admin.*, 2021 WL 1827232, *6 (D.
11 Ariz. 2021).

12 B. Medical Opinions And Administrative Findings

13 Plaintiff next argues that the ALJ "did not properly evaluate the medical opinions
14 and prior administrative medical findings." (Doc. 19 at 16.) Specifically, Plaintiff argues
15 the ALJ misinterpreted the opinions of Dr. Coelho, "did not evaluate the medical opinion
16 from Henry Saldana, PT," and "did not adopt all the limitations from the prior
17 administrative medical findings." (*Id.* at 16-20.)

18 1. Standard of Review

19 In January 2017, the SSA amended the regulations concerning the evaluation of
20 medical opinion evidence. *See Revisions to Rules Regarding Evaluation of Medical*
21 *Evidence*, 82 Fed. Reg. 5844 (Jan. 18, 2017). Because the new regulations apply to
22 applications filed on or after March 27, 2017, they are applicable here.

23 The new regulations, which eliminate the previous hierarchy of medical opinions,
24 provide in relevant part as follows:

25 We will not defer or give any specific evidentiary weight, including
26 controlling weight, to any medical opinion(s) or prior administrative medical
27 finding(s), including those from your medical sources The most
28 important factors we consider when we evaluate the persuasiveness of
medical opinions and prior administrative medical findings are supportability
. . . and consistency

20 C.F.R. § 416.920c(a).⁴ Regarding the “supportability” factor, the new regulations explain that the “more relevant the objective medical evidence and supporting explanations presented by a medical source are to support his or her medical opinion(s), . . . the more persuasive the medical opinions . . . will be.” *Id.* § 404.1520c(c)(1). Regarding the “consistency” factor, the “more consistent a medical opinion(s) . . . is with the evidence from other medical sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) . . . will be.” *Id.* § 404.1520c(c)(2)

Recently, the Ninth Circuit confirmed that the “recent changes to the Social Security Administration’s regulations displace our longstanding case law requiring an ALJ to provide ‘specific and legitimate’ reasons for rejecting an examining doctor’s opinion.” *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th Cir. 2022). Thus, “the former hierarchy of medical opinions—in which we assign presumptive weight based on the extent of the doctor’s relationship with the claimant—no longer applies. Now, an ALJ’s decision, including the decision to discredit any medical opinion, must simply be supported by substantial evidence.” *Id.* With that said, “[e]ven under the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as unsupported or inconsistent without providing an explanation supported by substantial evidence. The agency must articulate how persuasive it finds all of the medical opinions from each doctor or other source and explain how it considered the supportability and consistency factors in reaching these findings.” *Id.* at 792 (cleaned up). Although an “ALJ can still consider the length and purpose of the treatment relationship, the frequency of examinations, the kinds and extent of examinations that the medical source has performed or ordered from specialists, and whether the medical source has examined the claimant or merely reviewed the claimant’s records . . . the ALJ no longer needs to make specific findings regarding these relationship factors” *Id.*

⁴ Other factors that may be considered by the ALJ in addition to supportability and consistency include the provider’s relationship with the claimant, the length of the treatment relationship, the frequency of examinations, the purpose and extent of the treatment relationship, and the specialization of the provider. 20 C.F.R. § 416.920c(c).

1 2. Dr. Coelho

2 The Court has already addressed, in Part IV.A above, Plaintiff's challenge to the
3 ALJ's evaluation of Dr. Coelho's opinions. As discussed, although Dr. Coelho's report
4 contains ambiguous statements that can be rationally interpreted as expressions of mental
5 limitations, it was rational for the ALJ to interpret those statements in a manner consistent
6 with the RFC formulation.

7 The Court also notes that the ALJ's interpretation of Dr. Coelho's opinions was
8 consistent with Dr. Coelho's other observations and the objective medical evidence in the
9 record. (*See, e.g., id.* at 457 [follow up appointment after being seen for anxiety and
10 depression: "overall she is doing pretty good"]; *id.* at 459 ["She is feeling much better now.
11 . . . Affect is much more positive today. She no longer appears anxious. She is awake and
12 alert and responds to questions appropriately."]; *id.* at 524 ["Mental status: alert and
13 oriented x3, speech clear and appropriate, normal affect"]; *id.* at 533 ["Awake, alert,
14 oriented and following commands"]; *id.* at 352 [third party function report: "For how long
15 can the disabled person pay attention?" Answer: "No problem."]; *id.* at 695 ["[Plaintiff] is
16 not participating in any type of mental health treatment at this time. She has seen various
17 individual counselors over the years. No specific names or dates of treatment could be
18 ascertained from [Plaintiff]. . . . She is reporting she is not depressed at the time of the
19 current evaluation."]; *id.* at 697 ["Her attention and concentration were good."]; *id.* at 699
20 ["She demonstrated sufficient levels of attention and concentration during the
21 evaluation."]; *id.* at 766 ["Kratom tea & black seed oil to help with back pain. They have
22 been helping with anxiety & depression. Not needing Xanax anymore, would like to
23 decrease Paxil to 20mg."]; *id.* at 771 ["Patient verbalized understanding of the d/c
24 instructions."]; *id.* at 775 ["Judgment and thought content normal."]; *id.* at 817 [October 3,
25 2018: "Recent and remote memory is intact. Has good insight and comprehension."]; *id.*
26 at 1182 [July 24, 2019: "Negative for confusion. . . . The patient is not nervous/anxious."].)
27 Additionally, when evaluating the severity of Plaintiff's mental impairments related to
28 "concentrating and persisting" during step two, the ALJ found "mild limitations" because

1 although Plaintiff demonstrated some limitations “following instructions and completing
 2 tasks,” Plaintiff was able to “drive, prepare meals, read, manage funds, use the internet,
 3 and handle her own medical care” and “the record fails to show any mention of
 4 distractibility and an inability to complete testing that assesses concentration and
 5 attention.” (AR at 166.) Accordingly, the Court finds no error. *Cf. Kaufmann v. Kijakazi*,
 6 32 F.4th 843, 851 (9th Cir. 2022) (a court “clearly err[s]” if it does not “[l]ook[] to all the
 7 pages of the ALJ’s decision” when evaluating the ALJ’s explanations).

8 3. Physical Therapist Henry Saldana

9 Henry Saldana, Plaintiff’s physical therapist (“PT”), treated Plaintiff from February
 10 6, 2019 through April 19, 2019.⁵ (AR at 1119, 1151.) Upon Plaintiff’s discharge in April
 11 2019, Saldana opined as follows:

12 Patient has made objective improvements with ROM, Joint Mobility,
 13 Strength, Soft Tissue Mobility. These improvements have increased
 14 patient’s ability to perform these tasks: Standing> 15 minutes, Cleaning:
 15 Vacuuming, sweeping, Lifting from floor. Patient continues to present with
 16 impairments involving Soft Tissue Mobility, Strength, Posture, Pain, Joint
 17 Mobility of cervical spine with mild-minimal pain persisting in low back.
 18 These deficits limit patient’s ability to perform these tasks: Cleaning:
 Vacuuming, sweeping, Lifting from floor, Lifting overhead, Overhead tasks:
 Changing light bulb, putting away dishes, Sitting> 15-30 minutes, Standing>
 20-40 minutes. Patient has Reached maximum benefit from therapy,
 Demonstrated independence with HEP, Been discharged per patient request.
 Patient has been discharged from Physical Therapy.

19 (*Id.* at 1116.) PT Saldana also indicated that Plaintiff’s “Rehab Potential/Prognosis” was
 20 “Good.” (*Id.*)

21 Plaintiff argues that the ALJ’s failure to provide any discussion of PT Saldana’s
 22 opinion constitutes reversible error. (Doc. 19 at 18-19.) Plaintiff acknowledges that “the
 23 record does not show that Dr. Narwani actually signed the assessment” but contends that
 24 PT Saldana still qualifies as an “acceptable medical source” under the regulations. (*Id.*)
 25 Plaintiff further argues that PT Saldana’s opinion is “dispositive” because the opined-to
 26 limitations would have “precluded Plaintiff from performing her past relevant work,” as

27 ⁵ Dr. Ajay Narwani, M.D., is also listed as a treating provider on the medical
 28 discharge summary, but he did not sign the discharge summary. (AR at 1118.) Instead, it
 was electronically signed by Saldana. (*Id.* at 1119.)

1 PT Saldana limited Plaintiff to only sitting for 15-30 minutes at a time. (*Id.* at 19-20.) The
2 Commissioner responds that PT Saldana’s “statement did not qualify as a medical opinion
3 under the applicable regulations” and therefore the ALJ had no obligation to discuss it.
4 (Doc. 20 at 15-17.) More specifically, the Commissioner argues that the opined-to
5 limitations were too indefinite to be meaningful. (*Id.* at 16-17 [“Mr. Saldana did not state
6 whether Plaintiff was unable to perform those tasks at all or whether she simply
7 experienced some mild amount of pain or limitation of motion when doing so. . . .
8 Additionally, concerning Plaintiff’s sitting and standing abilities, Mr. Saldana gave no
9 opinion regarding how long Plaintiff could sit or stand at one time; rather, he simply
10 indicated that Plaintiff exhibited an improved ability to stand for longer than 15 minutes
11 but still experienced some limitation in sitting for longer than 15 to 30 minutes and standing
12 for 20 to 40 minutes.”].) In reply, Plaintiff asserts that PT Saldana’s statement qualifies as
13 a medical opinion because he “provided a clear statement regarding Plaintiff’s limitations
14 stemming from her impairments.” (Doc. 21 at 4-5.)

15 Plaintiff has the better of these arguments. Under 20 C.F.R. § 404.1513(a)(2), a
16 medical opinion is defined as a “statement from a medical source about what you can still
17 do despite your impairment(s) and whether you have one or more impairment-related
18 limitations or restrictions in the following abilities” which, as relevant here, include the
19 ability to “perform physical demands of work activities, such as sitting, standing, walking,
20 lifting, carrying, pushing, pulling, or other physical functions (including manipulative or
21 postural functions, such as reaching, handling, stooping, or crouching).” *Id.* Following
22 the 2017 changes to the Social Security regulations, “[t]he agency must articulate how
23 persuasive it finds all of the medical opinions from each doctor or other source and explain
24 how it considered the supportability and consistency factors in reaching these findings.”
25 *Woods*, 32 F.4th at 792 (cleaned up). Here, it is undisputed that the ALJ did not discuss
26 PT Saldana’s opinion. This was error. PT Saldana opined that Plaintiff would have some
27 limitations, including limitations related to sitting for more than 30 minutes and standing
28 for more than 20 minutes. (AR at 1116.) The Commissioner cites no case law suggesting

1 that the presence of ambiguities in an opinion from a medical source, which otherwise
2 identifies limitations, permits an ALJ to ignore the opinion and decline to offer a rationale
3 for discrediting it. *Cf. Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014) (“We are
4 constrained to review the reasons the ALJ asserts.”).

5 Nor was the error harmless. As Plaintiff correctly notes, the limitations to which
6 PT Saldana opined would have precluded Plaintiff from performing her past relevant work.
7 The Commissioner does not argue otherwise—the Commissioner’s sole (and incorrect)
8 argument on this issue is that it was permissible for the ALJ to ignore PT Saldana’s opinion
9 and decline to discuss it. (Doc. 20 at 16-17.)

10 4. Prior Administrative Medical Findings

11 As noted, the ALJ deemed “persuasive” the opinions of “the State agency
12 psychological reviewers.” (AR at 172.) In their corresponding reports, these reviewers all
13 included a physical limitation—namely, that Plaintiff would be “Limited” in her ability to
14 reach in “any direction (including overhead).” (*Id.* at 86, 106, 127, 153.) However, the
15 ALJ did not include any reaching-related limitations in the RFC—instead, the ALJ
16 concluded without qualification that Plaintiff “can overhead reach.” (*Id.* at 168.)

17 Plaintiff contends the ALJ’s approach was erroneous because, under Social Security
18 Ruling 96-8p, “[i]f the RFC assessment conflicts with an opinion from a medical source,
19 the adjudicator must explain why the opinion was not adopted.” (Doc. 19 at 20.) Plaintiff
20 further contends the error was not harmless because, according to the Dictionary of
21 Occupational Titles (“DOT”), her past work consists of “jobs that require frequent
22 reaching.” (*Id.*) In response, the Commissioner argues that “when read in context of the
23 remainder of the decision and the hearing testimony, it is apparent that this statement ‘can
24 overhead reach’ is a harmless scrivener’s error and that the ALJ actually intended to include
25 a limitation to occasional overhead reaching.” (Doc. 20 at 17-18.) The Commissioner
26 further argues that any error was harmless because “we know than an individual who was
27 limited to occasional overhead reaching could perform Plaintiff’s past work as an office
28 manager and a medical secretary because the vocational expert testified to this at the

1 hearing.” (*Id.* at 19-20.) Plaintiff offers no additional argument in her reply brief.

2 Plaintiff has established that the ALJ committed error. The ALJ deemed the state
3 agency reviewers’ opinions persuasive but then adopted, without explanation, an RFC that
4 failed to incorporate one of the physical limitations to which all of the state agency
5 reviewers opined. The Court is unwilling to disregard this as a “scrivener’s error.”

6 It is a closer call whether the error was harmless in light of the vocational expert’s
7 testimony that Plaintiff’s past work would only require occasional overhead reaching. (AR
8 at 69.) However, because the Court has already concluded that Plaintiff is entitled to a
9 remand for other reasons, it is unnecessary to decide whether this particular error would
10 alone require a remand—it is simply an additional issue the ALJ can address on remand.

11 C. RFC Determination

12 Plaintiff’s third assignment of error is that the “ALJ’s step four finding was not
13 supported by the substantial evidence because the unrefuted opinions in the record
14 indicated Plaintiff cannot perform her past relevant work.” (Doc. 19 at 21.) Plaintiff
15 reiterates her argument that her “unrefuted mental limitations preclude her from performing
16 her past relevant work” and also argues that her “unrefuted physical limitations preclude
17 her from performing her past relevant work.” (*Id.* at 22.)

18 As previously explained, the RFC determination as to Plaintiff’s mental limitations
19 was supported by substantial evidence. However, given the ALJ’s failure to consider PT
20 Saldana’s opinions regarding Plaintiff’s physical limitations and failure to incorporate the
21 reaching limitations to which the state agency reviewers opined, the RFC determination as
22 to Plaintiff’s physical impairments was marred by harmful error.

23 D. Incorrect Time Period

24 1. The Parties’ Arguments

25 Plaintiff’s final assignment of error is that the ALJ adjudicated the wrong benefit
26 time period, as the onset date should have been August 11, 2017 (the onset date stated in
27 Plaintiff’s prior application for disability benefits) rather than October 15, 2017 (the onset
28 date stated in Plaintiff’s underlying application). (Doc. 19 at 23-24.) Plaintiff contends

1 that her previous alleged onset date was implicitly triggered when the ALJ considered
 2 “prior administrative medical findings in Exhibits 1A and 2A that were the reconsideration
 3 level findings in the prior applications.” (*Id.* at 24.)

4 In response, the Commissioner argues that the ALJ “made no indication that she
 5 was reopening the prior determination” and “had no reason to reopen the prior
 6 determination because both the prior determination and the ALJ’s decision found that
 7 Plaintiff was not disabled.” (Doc. 20 at 21.) The Commissioner explains that when a
 8 claimant impliedly requests reopening, the ALJ “[n]eed not make a finding on the issue of
 9 reopening the determination or decision if issuing an unfavorable decision.” (*Id.* at 22,
 10 quotation omitted.) The Commissioner also notes that the ALJ “made no mention of
 11 reopening Plaintiff’s prior application or using an earlier alleged onset date.” (*Id.*) Finally,
 12 the Commissioner argues that any error in the alleged onset date is harmless because
 13 Plaintiff “has not presented evidence showing a significant change in her abilities” between
 14 August 11, 2017 and October 15, 2017. (*Id.* at 22-23.)

15 In reply, Plaintiff reiterates that “by adjudicating a time-period already adjudicated
 16 by an earlier determination (October 15, 2017 through August 9, 2018), the ALJ reopened
 17 that earlier determination.” (Doc. 21 at 5-6.) Plaintiff further contends that “[i]f the ALJ
 18 did not intend to reopen the prior determination, the ALJ should have dismissed that portion
 19 of the request for hearing under the doctrine of Administrative *res judicata*,” and because
 20 the ALJ did not do so, “there are unadjudicated periods in this case that warrant remand.”
 21 (*Id.* at 6.)

22 2. Analysis

23 The Court finds it unnecessary to decide whether this issue provides an independent
 24 basis for remand given its determination that Plaintiff is already entitled to a remand for
 25 other reasons.

26 ...


27 ...

28 ...

1 Accordingly,

2 **IT IS ORDERED** that the decision of the ALJ is **reversed** and the case is
3 **remanded** for further proceedings consistent with this opinion. The Clerk shall enter
4 judgment accordingly and terminate this action.

5 Dated this 13th day of September, 2023.

6
7
8 
9 _____
Dominic W. Lanza
United States District Judge